FILED Robert Stempler, Cal. Bar No. 160299
Email: Robert@StopCollectionHarassment.com
CONSUMER LAW OFFICE OF
ROBERT STEMPLER, APLC
P.O. Box 1721
Palm Strings CA 02262 1721 2009 OCT -6 AM 10: 04 1 CLERK U.S. DISTRICT COURT CENTRAL DIST, OF CALIF. LOS ANGELES 2 3 Palm Springs, CA 92263-1721 BY. 4 Telephone (760) 422-2200 Fax: (760) 479-5957 5 Counsel for Plaintiff 6 7 UNITED STATES DISTRICT COURT 8 CENTRAL DISTRICT OF CALIFORNIA 9 10 07266 SIO PLAx JEREMY EVANS, 11 COMPLAINT FOR:

1. VIOLATING THE FAIR DEBT
COLLECTION PRACTICES ACT; 12 Plaintiff, 13 VS. VIOLATING THE CALIFORNIA 2. ROSENTHAL FAIR DEBT NORTH STAR CAPITAI 14 ACQUISITION, LLC: NELSON & KENNARD ATTORNEYS AT LAW; COLLECTION PRACTICES ACT; 15 and DEMAND FOR JURY TRIAL CRAIG CLEMENT, 16 and DOES 1 to 10: 17 Defendants. 18 19 /// 21 /// 22 /// 23 24 25 26 27 28

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#### Jurisdiction

1. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331. Supplemental jurisdiction exists for the state law claim, pursuant to 28 U.S.C. § 1367 and rule 18(a) of the Federal Rules of Civil Procedure.

#### **Parties**

- 2. The plaintiff, JEREMY EVANS ["plaintiff"], is a natural person.
- 3. Defendant NORTH STAR CAPITAL ACQUISITION, LLC ["NSCAL"] was and is an entity engaged primarily in the business of collecting debts.
- 4. Defendant NELSON & KENNARD, ATTORNEYS AT LAW ["Nelson"] was and is an entity engaged primarily in the business of collecting debts.
- 5. Defendant CRAIG CLEMENT ["Clement"] was employed by or a collection agent of Nelson and/or NSCAL and committed, on its behalf, the conduct ascribed to Clement, below.
- 6. The true names and capacities of the defendants sued herein as DOES 1-10, inclusive, are unknown to plaintiff, at the present time.

### Facts Supporting Each Claim

- 7. On April 8, 2008, Defendant Nelson mailed a collection letter on behalf of Nelson's client, NSCAL, to Plaintiff, representing that the "current balance due" on the account with Plaintiff was \$3,712.20.
- 8. On October 8, 2008, Defendant Nelson filed a collection lawsuit on behalf of Nelson's client, NSCAL, against plaintiff, in which Defendant NSCAL alleged that it was assigned a purported debt of plaintiff in the amount of \$2,387.42, that the interest due on the purported debt was at the rate of 25.900 percent per year from November 29, 2002.
- 9. Defendant's collection lawsuit was signed by Robert Scott Kennard, a partner of Nelson.

- 10. The purported debt underlying Defendant's collection lawsuit involved a purported credit card, which Plaintiff incurred primarily for personal, family, or household purposes.
- 11. At the time of Defendant's filing the collection lawsuit against Plaintiff, the statute of limitations period had expired, barring the alleged claim.
- 12. Plaintiff was served with the collection lawsuit and retained counsel, Mr. William Rose, to defend against the collection lawsuit.
- 13. On December 4, 2008, Plaintiff's counsel appeared in the collection lawsuit by filing an answer to complaint and serving several discovery requests.
- 14. On January 27, 2009 on behalf of NSCAL, Defendant Nelson served on Plaintiff's counsel a response to the discovery requests. The proofs of service show that the discovery responses were addressed to both Mr. Rose and Mr. Stempler.
- 15. In a letter dated February 9, 2009, Clement communicated directly with Plaintiff regarding the account for which Plaintiff was represented, sending the letter directly to Plaintiff's residence address. The letter stated that the "Balance to Date" on the account was \$1,648.83 and, among other things, that the purpose of the letter was "to extend a special offer to you to help decrease some of your unwanted debt. Our client may be willing to settle your account for less than the current balance due." The letter also suggested that Plaintiff contact Nelson directly and "Please take advantage of this offer and avoid further collection proceedings."
- 16. The letter dated February 9, 2009 from Defendants Nelson and Clement failed to explain why the account balance on February 9, 2009 was \$1,648.83, whereas on April 8, 2008 (ten months earlier) the balance was \$3,712.20, and was \$2,387.42 on October 8, 2008, the date on which the collection lawsuit was filed.
- 17. During the course of litigation, Plaintiff's counsel advised Mr. Kennard that the complaint was barred by the expiration of the statute of limitations period.
- 18. In a letter dated October 1, 2009, Mr. Kennard sent Mr. Stempler a letter which stated, among other things, "Given the cost of litigation, my client has

- 26. The above-noted purported debt was incurred by plaintiff primarily for personal, family, or household purposes.
- 27. Defendants violated numerous sections of the FDCPA, in particular, but not limited to: 15 U.S.C. §§ 1692c(a)(2), 1692e, 1692f.
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#### SECOND CLAIM FOR RELIEF

# Violating the California Rosenthal Fair Debt Collection Practices Act Against Defendants NSCAL and Clement

- 28. Those paragraphs under the headings "Jurisdiction," "Parties," "Facts Supporting Each Claim," and "Violating the Fair Debt Collection Practices Act" are incorporated by reference.
- 29. The Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code § 1788 et seq. ("Rosenthal Act") was enacted in 1976 to ensure the integrity of our banking and credit industry. Cal. Civil Code § 1788.1(a)(1). The Legislature found: "Unfair or deceptive debt collection practices undermine the public confidence which is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers." <u>Id</u>.
- 30. Defendants are each a "debt collector" within the meaning of Civil Code § 1788.2(c), in that Defendants regularly and in the ordinary course of business, on behalf of itself or others, engaged in acts and practices in connection with the collection of consumer debts.
- 31. Plaintiff is a "debtor" within the meaning of Civil Code § 1788.2(h), in that Plaintiff is a natural person from whom Defendants sought to collect a consumer debt alleged to be due and owing.
- 32. The purported debt which Defendants attempted to collect from Plaintiff is a "consumer debt" within the meaning of Civil Code § 1788.2(f), in that it was incurred primarily for personal, family, or household purposes.
- 33. Defendants violated the Rosenthal Act, including Cal. Civil Code §§ 1788.10, 1788.17.
  - 34. Defendants' violations were done willfully and knowingly.

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#### **PRAYER**

WHEREFORE, plaintiff prays for judgment as follows:

- 1. On the First Claim for violating the Fair Debt Collection Practices Act, pursuant to 15 U.S.C. § 1692k, an award of actual and statutory damages, costs and reasonable attorneys' fees;
- 2. On the Second Claim for violating the California Rosenthal Fair Debt Collection Practices Act, pursuant to § 1788.30, an award of actual and statutory damages, costs and reasonable attorneys' fees;
  - 3. For such other further relief as the Court deems just and proper.

#### **DEMAND FOR JURY TRIAL**

Please take notice that plaintiff demands trial by jury in this action.

Respectfully submitted, CONSUMER LAW OFFICE OF ROBERT STEMPLER, APLC

By: Robert Stempler, Attorney for Plaintiff

#### UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

#### NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge S. James Otero and the assigned discovery Magistrate Judge is Paul L. Abrams.

The case number on all documents filed with the Court should read as follows:

CV09- 7266 SJO (PLAx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

#### NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

IXI	Western Division	[.]	Southern Division				
	312 N. Spring St., Rm. G-8 Los Angeles, CA 90012		411 West Fourth St., Rm. 1-053 Santa Ana, CA 92701-4516				
			Opportunity				

Eastern Division 3470 Twelfith St., Rm. 134 Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Robert Stempler, Cal. Bar No. 160299	ر بر ۵ ما بر ۱۳ ما ب
Email: Robert@StopCollectionHarassment.com	
Consumer Law Office of Robert Stempler, APLC	
P.O. Box 1721	
Palm Springs, CA 92263-1721	
Telephone (760) 422-2200; Fax: (760) 479-5957	
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NELSON & KENNARD, ATTORNEYS AT LAW;	SUMMONS
CRAIG CLEMENT; and DOES 1 to 10;	
DEFENDANT(S).	
TO: DEFENDANT(S):	
A lawsuit has been filed against you.	•
Within 20 days after service of this summor	ns on you (not counting the day you received it), you
must serve on the plaintiff an answer to the attached M	complaint \( \square\) amended complaint
□ congrerclaim □ cross-claim or a motion under Rule 1	2 of the Federal Rules of Civil Procedure. The answer
or motion must be served on the plaintiff's attorney, Ro	
P.O. Box 1721; Palm Springs CA 92263-1721	If you fail to do so,
judgment by default will be entered against you for the	elief demanded in the complaint. You also must file
your answer or motion with the court.	
	Clerk, U.S. District Court
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OCT - 6 2009	CHRISTOPHER POWERS
Dated:	Ву:
	Deputy Clerk
	(Seal of the Court)
[Use 60 days if the defendant is the United States or a United States	s agency, or is an officer or employee of the United States. Allowed
60 days by Rule 12(a)(3)].	
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## UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET

VIII(a). IDE		his action been previ	iously filed in this court and	d dismissed, remanded or closed? ♥ No □ Yes					
VIII(b). REI If yes, list case		ny cases been previo	ously filed in this court that	t are related to the present case? ▼No □ Yes					
(Check all box	□ B. Ca □ C. Fo □ D. In	rise from the same of all for determination or other reasons wou wolve the same pate	or closely related transaction of the same or substantially ald entail substantial duplication	ns, happenings, or events; or y related or similar questions of law and fact; or ation of labor if heard by different judges; or and one of the factors identified above in a, b or c also is present.					
(a) List the (	County in this District: Ca	alifornia County out	side of this District; State if	f other than California; or Foreign Country, in which <b>EACH</b> named plaintiff resides. this box is checked, go to item (b).					
County in thi				California County outside of this District; State, if other than California; or Foreign Country					
Los Angeles									
Los Angele.	County								
(b) List the €	County in this District; Core if the government, its	alifornia County out	side of this District; State if	f other than California; or Foreign Country, in which <b>EACH</b> named defendant resides.  If this box is checked, go to item (c).					
County in th			-	California County outside of this District; State, if other than California; or Foreign Country					
County in th	is District.			Sacramento County; Minnesota State; New York State					
(c) List the Note: In	land condemnation cas	alifornia County out	tside of this District; State is of the tract of land involv	f other than California; or Foreign Country, in which <b>EACH</b> claim arose.  ved.  California County outside of this District; State, if other than California; or Foreign Country					
Los Angele				Sacramento County; Minnesota State; New York State					
		lino. Riverside. Ver	ntura. Santa Barbara, or S	San Luis Obispo Counties					
Note: In land	condemnation cases, use	the location of the t	tract of land involved	300 300 pt 300 p					
X SIGNATI	URE OF ATTORNEY (C	OR PRO PER):	no b	Date October 5, 2009					
Notice t	o Counsel/Parties: The	: CV-71 (JS-44) Civ	ed by the Judicial Conference	rmation contained herein neither replace nor supplement the filing and service of pleadings the of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed ting the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)					
Key to Statist	tical codes relating to Soc	ial Security Cases:							
	Nature of Suit Code	Abbreviation	Substantive Statement of	f Cause of Action					
	861	HIA	All claims for health insur Also, include claims by he program. (42 U.S.C. 1935)	surance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended hospitals, skilled nursing facilities, etc., for certification as providers of services under the P35FF(b))					
	862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safe (30 U.S.C. 923)						
	863	DIWC All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))							
	863	DIWW	ws or widowers insurance benefits based on disability under Title 2 of the Social Security S.C. 405(g))						
	864	SSID	All claims for supplement Act, as amended.	tal security income payments based upon disability filed under Title 16 of the Social Security					
	865	RSI	All claims for retirement (U.S.C. (g))	(old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42					